

WASHINGTON METROPOLITAN AREA TRANSIT COMMISSION

SILVER SPRING, MARYLAND

ORDER NO. 14,783

IN THE MATTER OF:

Served May 21, 2014

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|------------------------------------|---|----------------------|
| Application of ADEPEJU AKINTO, |) | Case No. AP-2013-368 |
| Trading as ADVANTAGE SERVICES, for |) | |
| a Certificate of Authority -- |) | |
| Irregular Route Operations |) | |

This matter is before the Commission on applicant's request for reconsideration of Order No. 14,601, served February 26, 2014, denying without prejudice the above-captioned application for WMATC operating authority.

I. STANDARD FOR RECONSIDERATION

Under Article XIII, Section 4, of the Compact, a party affected by a final order or decision of the Commission may file within 30 days of its publication a written application requesting Commission reconsideration of the matter involved.¹ The application must state specifically the errors claimed as grounds for reconsideration.² The Commission must grant or deny the application within 30 days after it has been filed.³ If the Commission does not grant or deny the application by order within 30 days, the application shall be deemed denied.⁴ If the application is granted, the Commission shall rescind, modify, or affirm its order or decision with or without a hearing, after giving notice to all parties.⁵ Filing an application for reconsideration may not act as a stay upon the execution of a Commission order or decision, or any part of it, unless the Commission orders otherwise.⁶

Applicant's request for reconsideration of Order No. 14,601 was timely received for filing in this proceeding on March 28, 2014, but does not specify any error.

II. REASON FOR DENIAL

The Compact, Title II, Article XI, Section 7(a), authorizes the Commission to issue a certificate of authority if it finds that the proposed transportation is consistent with the public interest and that the applicant is fit, willing, and able to perform the proposed

¹ Compact, tit. II, art XIII, § 4(a).

² Compact, tit. II, art XIII, § 4(a).

³ Compact, tit. II, art XIII, § 4(b).

⁴ Compact, tit. II, art XIII, § 4(c).

⁵ Compact, tit. II, art XIII, § 4(d).

⁶ Compact, tit. II, art XIII, § 4(e).

transportation properly, conform to the provisions of the Compact, and conform to the rules, regulations, and requirements of the Commission. If the applicant does not make the required showing, the application must be denied under Section 7(b).

An applicant for a certificate of authority must establish financial fitness, operational fitness, and regulatory compliance fitness.⁷ A determination of compliance fitness is prospective in nature.⁸ The purpose of the inquiry is to protect the public from those whose conduct demonstrates an unwillingness to operate in accordance with regulatory requirements.⁹ Past violations do not necessarily preclude a grant of authority but permit the inference that violations will continue.¹⁰

According to Commission records, applicant previously served as vice president of Faith Transport Inc., (Faith), and applicant's operations manager, John Owode, served as Faith's president. Faith formerly held WMATC Certificate No. 1174. Said certificate was revoked in Order No. 11,962 on April 30, 2009, for Faith's willful failure to comply with the Commission's insurance requirements in Regulation No. 58 and for Faith's willful failure to pay a \$50 late fee in accordance with Regulation No. 67-03(c).¹¹

The revocation order stipulated that the \$50 late fee would remain due and gave Faith 30 days to file an affidavit verifying removal of vehicle markings and 30 days to surrender Certificate No. 1174. We found in Order No. 14,601 that Faith had yet to comply with those requirements.

We then observed that when an applicant or a person controlling an applicant has a record of violations, or a history of controlling companies with such a record, the Commission considers the following factors in assessing the likelihood of applicant's future compliance: (1) the nature and extent of the violations, (2) any mitigating circumstances, (3) whether the violations were flagrant and persistent, (4) whether the controlling party has made sincere efforts to correct past mistakes, and (5) whether the controlling party has demonstrated a willingness and ability to comport with the Compact and rules and regulations thereunder in the future.¹²

Against this backdrop, we noted that the failure of Faith to maintain compliance with the Commission's insurance requirements and

⁷ *In re Reliable Limo. & Bus Serv., LLC*, No. AP-12-183, Order No. 13,775 (Feb. 28, 2013).

⁸ *Id.*

⁹ *Id.*

¹⁰ *Id.*

¹¹ *In re Faith Transp. Inc.*, No. MP-09-045, Order No. 11,962 (Apr. 30, 2009).

¹² Order No. 13,775.

pay the \$50 late fee was deemed serious enough to warrant revocation of Faith's operating authority, and recounted Faith's failure to pay the outstanding fee, verify removal of vehicle markings, and surrender Certificate No. 1174, despite applicant having recently been made aware of the revocation order's requirements.

Accordingly, we denied the application without prejudice.

III. GROUNDS FOR RECONSIDERATION

As noted above, the denial of operating authority in this proceeding was predicated on violations committed by Faith Transport, Inc., in 2009 when applicant was its vice president. Those violations included failure to pay a \$50 late fee, failure to verify removal of vehicle markings, and failure to surrender WMATC Certificate No. 1174.

In support of the request for reconsideration of Order No. 14,601 in this proceeding, applicant has surrendered Faith's original Certificate No. 1174, paid the \$50 late fee declared to be still due from Faith, and submitted a statement verifying removal of Faith vehicle markings.

IV. ORDER TO REOPEN

Although no error has been alleged, we find grounds for reopening this proceeding and conditionally granting the instant application.¹³

First, it now appears that Faith paid the \$50 late fee in 2009.¹⁴ Second, applicant's surrender of Certificate No. 1174 and verification of removal of Faith vehicle markings corrects past mistakes. Third, the filing of the instant application is, in and of itself, some evidence of applicant's willingness and ability to comport with the Compact and rules and regulations thereunder in the future.¹⁵ And fourth, applicant verifies that Faith stopped operating in 2008.

The Commission has found other applicants fit under similar circumstances.¹⁶ Applicant shall serve a one year period of probation as a means of ensuring prospective compliance.¹⁷

¹³ See *In re Nona Angelique Keith-Henson, t/a Formalities*, No. AP-11-056, Order No. 13,091 (Dec. 19, 2011) (denying reconsideration of voided grant of authority but reopening and issuing operating authority on strength of new fitness evidence).

¹⁴ A refund shall be issued accordingly.

¹⁵ *In re My Own Place, Inc.*, No. AP-12-267, Order No. 13,694 (Jan. 23, 2013).

¹⁶ See *In re Betty Emilia Martinez, t/a Enso Travel Serv.*, No. AP-13-128, Order No. 14,256 (Oct. 1, 2013) (accounted for vehicle markings and certificate of authority and verified timely cessation of operations, with no evidence to the contrary); *In re Felicia Elizabeth Medlock, t/a Felicia E. Medlocks Transp.*, No. AP-12-281, Order No. 13,710 (Jan. 31, 2013) (paid outstanding late fees, accounted for vehicle markings, and verified timely cessation of operations with no evidence to the contrary); *In re Voneva Inc.*,

Based on the evidence in this record, and in consideration of the terms of probation and other conditions prescribed herein, the Commission finds that the proposed transportation is consistent with the public interest and that applicant is fit, willing, and able to perform the proposed transportation properly, conform to the provisions of the Compact, and conform to the rules, regulations, and requirements of the Commission.

THEREFORE, IT IS ORDERED:

1. That this proceeding is hereby reopened under Commission Rule No 26.

2. That upon applicant's timely compliance with the requirements of this order, Certificate of Authority No. 1174 shall be issued to Adepeju Akinto, trading as Advantage Services, 5204 Ashleigh Glen Court, Glenn Dale, MD 20769-9148.

3. That applicant may not transport passengers for hire between points in the Metropolitan District pursuant to this order unless and until Certificate No. 1174 has been issued in accordance with the preceding paragraph.

4. That applicant is hereby directed to present its revenue vehicle(s) for inspection and file the following documents within the 180-day maximum permitted in Commission Regulation No. 66: (a) evidence of insurance pursuant to Commission Regulation No. 58; (b) an original and four copies of a tariff or tariffs in accordance with Commission Regulation No. 55; (c) a vehicle list stating the year, make, model, serial number, fleet number, license plate number (with jurisdiction) and seating capacity of each vehicle to be used in revenue operations; (d) a copy of the for-hire vehicle registration card, and a lease as required by Commission Regulation No. 62 if applicant is not the registered owner, for each vehicle to be used in revenue operations; and (e) proof of current safety inspection of said vehicle(s) by or on behalf of the United States Department of Transportation, the State of Maryland, the District of Columbia, or the Commonwealth of Virginia.

5. That applicant shall be placed on probation for a period of one year commencing with the reissuance of a certificate of authority in accordance with the terms of this order and that a willful violation of the Compact, or of the Commission's rules, regulations or

No. AP-09-107, Order No. 12,240 (Dec. 1, 2009) (paid outstanding late fees, accounted for vehicle markings, and verified timely cessation of operations with no evidence to the contrary); *In re Smart Ride, Inc.*, No. AP-08-081, Order No. 11,446 (July 1, 2008) (paid outstanding late fees, accounted for vehicle markings, and verified timely cessation of operations).

¹⁷ See, e.g., Order No. 14,256 (same); Order No. 13,710 (same); Order No. 12,240 (same); Order No. 11,446 (same).

orders thereunder, by applicant during the period of probation shall constitute grounds for immediate suspension and/or revocation of applicant's operating authority without further proceedings, regardless of the nature and severity of the violation.

6. That the grant of authority herein shall be void and the application shall stand denied upon applicant's failure to timely satisfy the conditions of issuance prescribed herein.

BY DIRECTION OF THE COMMISSION; COMMISSIONERS BRENNER, HOLCOMB, AND BROWN:

A handwritten signature in black ink, appearing to read 'W. S. Morrow, Jr.', written in a cursive style.

William S. Morrow, Jr.
Executive Director